[AT] Federal Communication Senate on Product Placement on ORF Television

IRIS 2007-8:1/8

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In May 2003, the *Bundeskommunikationssenat* (Federal Communication Senate - BKS) decided that ORF had committed several breaches of advertising rules enshrined in the *ORF-Gesetz* (ORF Act) in the TV programme "Starmania" broadcast on 17 January 2003 (see IRIS 2003-7: 6). Part of this decision was then overturned by the *Verwaltungsgerichtshof* (Administrative Court - VwGH) at ORF's request (see IRIS 2006-7: 8). The BKS issued a new ruling on 18 June 2007.

As in the original proceedings, the BKS ruled that ORF had repeatedly shown crisp packets, mineral water bottles, a one-metre high tube bearing the brand name of a soft drink and plasma television screens, all of which clearly bore a brand name. The current procedure concerned only whether this constituted illegal product placement.

Product placement is allowed on ORF if the payment it receives for mentioning the product is only of little value, with a guideline figure of EUR 1,000 in place. If the payment exceeds this threshold, product placement is only permitted if the programme is a cinema film, television film or television series or if it is a necessary part of the transmission or reporting of sports, cultural or charity events (apart from programmes aimed at children and young people). Since none of these exceptions applied, the only question to consider was whether the payment threshold had been exceeded.

According to the Administrative Court, whose verdict was binding in this case, it was not the amount that had been agreed or actually paid that counted, but the objective value of the mention or presentation of the brand or product concerned. With regard to the individual offences that ORF was accused of committing, the BKS asked an expert to estimate the market value of the product placements. For this purpose, the expert used the "comparative procedure for the financial valuation of different forms of product placement". He concluded that the presentation of the crisp packets, mineral water bottles and tube were each worth more than EUR 1,000, while that of the brand name on the side of the plasma TV screen was worth less.

The BKS therefore ruled that the presentation of the crisp packets, mineral water bottles and tube infringed the ban on product placement. However, ORF was permitted to show the brand name of the plasma screen manufacturer.

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Entscheidung des BKS vom 18. Juni 2007 (GZ 611.923/0004-BKS/2007)

Ruling of the Bundeskommunikationssenat (Federal Communication Senate), 18 June 2007 (GZ 611.923/0004-BKS/2007)

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